Division of Public Defender Services
State of Connecticut

ATTORNEY CHRISTINE PERRA RAPILLO
DIRECTOR OF DELINQUENCY DEFENSE & CHILD PROTECTION

TESTIMONY OF OFFICE OF CHIEF PUBLIC DEFENDER
Christine Perra Rapillo
Director of Delinquency Defense and Child Protection

COMMITTEE ON CHILDREN
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RAISED BILL 6399
AN ACT CONCERNING CHILDREN IN THE JUVENILE JUSTICE SYSTEM.

The Office of Chief Public Defender supports passage of Raised ***Bill 6399, An Act Concerning Children in the Juvenile Justice System*** and urges this Committee to report favorably on this proposal. This bill includes a number of important proposals that make the juvenile justice system fairer to the children who enter the juvenile matters court each year. It also contains a proposal to ensure that the free legal services provided by this agency's staff lawyers and assigned counsel are reaching those individuals who are truly indigent who need legal assistance and are not being used to deal with the issue of unrepresented or pro se parties in the judiciary. Much of what appears in Raised Bill 6399 is not new. The proposals regarding credit for time children serve in juvenile detention and on shackling have been debated before this committee in past sessions. Given some recent statutory changes and Supreme Court rulings, the Office of Chief Public Defender believes that these proposals are more important than ever and should receive favorable consideration.

Section One would prohibit the shackling of a child charged with a delinquency offense during a court proceeding unless a judge has determined that the child presents a danger to public safety. This protection would apply to children who have not yet been adjudicated or convicted of a delinquency offense and are therefore presumed innocent. In most of the juvenile courts across the state, children charged with delinquency offenses are routinely shackled for court appearances. Children as young as age 9, often charged with misdemeanors or violations of probation, are almost always required to wear ankle chains and in some cases are subjected to belly chain restraints that require them to wear both ankle shackles and handcuffs that are attached to a belly chain. These children are chained for court appearances even though there is no indication that they will attempt to

run away or be otherwise uncooperative with the court process. Leaving a child in leg irons without a finding that he/she is dangerous, disruptive, or prone to escape is so far removed from the 'best interest of the child' that prejudice is presumed. Unnecessarily placing a child in chains enhances only the assumption that the child is a criminal and must be restrained. Ending indiscriminate shackling will clarify that the courts must recognize that children should be treated in a manner that enhances their ability to reform and rehabilitate.

States such as Massachusetts, Wisconsin and Dade County Florida have ended shackling of juveniles through litigation. We would urge this Committee to take a progressive stand on the practice of routine shackling of juvenile defendants and outlaw the practice without waiting for a court to act after litigation. Ending the routine shackling of children would instead send troubled children the message that the people of Connecticut value and see them not as criminals but as children full of potential for successful integration into their communities and their homes.

Similar proposals have been before this committee in the past. Opponents have argued that the Judicial Branch already has a policy that presumes that a child should come to court without mechanical restraints. Despite the fact that the Judicial Branch has had such a policy for many years, the vast majority of children continue to come to court in shackles. Judges routinely defer to court marshals, who prefer to see all detained children restrained, and have successfully argued that judges issue blanket orders that every child, no matter what the charge or individual background, must appear in court in restraints. This proposal would continue the presumption that a child should come to court unrestrained and would require that a judge make an individualized determination of danger each time a child was required to be shackled.

Section Two pertains to the granting of predisposition or presentence credit to children who are held in detention and subsequently sentenced to delinquency commitment to the Department of Children and Families (DCF). This proposal has been opposed by both the Judicial Branch and the Department of Children and Families in years past. Both agencies have claimed that giving a child credit for time served is inconsistent with the rehabilitative nature of the juvenile system.

While it is true that the juvenile court provides significantly more rehabilitation services that than the adult correctional system, detaining a child in a locked facility is a deprivation of a constitutionally protected liberty interest. Children who are accused of crimes should receive credit for all the time they spend detained. This proposal is important to the children that this agency represents, especially in light of the recent ruling by the Connecticut Supreme Court in In Re: Hakeem A. In that case, the Connecticut Supreme Court took away a child's right to plea bargain for less commitment time when the sentence is to be a commitment as a delinquent to the Department of Children and Families. Children have no choice but to take the maximum sentence, 18 months at the Connecticut Juvenile Training School (CJTS). If a child exercises his/her right to have a trial, they most often sit in detention and none of that time counts towards their sentence. Since this legislature passed P.A.12-1 in the June Special Session, children cannot even choose to plead guilty and accept the maximum penalty to get their time started. P.A. 12-1 took away a judge's authority to order a child committed directly to the CJTS. Children now have to either wait for a residential placement or get the Commissioner of DCF to approve CJTS. It is wrong to eliminate so many options for a child to resolve his or her delinquency case and not give them credit for the time they serve pretrial while our system figures out what the appropriate rehabilitation is.

The lack of credit for time served is particularly unfair to girls in the system, who do not have the option of going to CJTS to "start their time". In one particular case in which I appeared as counsel, my female client had to wait a month and a half after agreeing to go to residential. Adults who are held on bond pretrial receive credit for all time served if subsequently convicted and sentenced to jail time. This change would give detained juveniles the same right to time credit as adults. This office is aware that a few years ago, this legislature enacted law that would provide credit towards the probationary period imposed. However, the result is of no consequence since children still remain detained awaiting placement and services while committed as delinquent.

Section Three would apply the current protections of *C.G.S. §46b-137, Admissibility of confession or other statement in juvenile proceedings* to cases that have been transferred to the adult court from the juvenile docket. Currently, C.G.S. §46b-137 deems statements taken from a juvenile, outside the presence of a parent, inadmissible in

a later delinquency prosecution. Under current Connecticut case law, this same statement that was made without the presence of a juvenile's parents becomes admissible against the child once the case is transferred to adult court. C.G.S.§46b-137 was originally passed to ensure that a minor, who is not legally able to waive his rights or make legal decisions, has the counsel of a parent or guardian before choosing to speak to the police. Whether a statement made by a juvenile is admissible should not be dictated by the venue of the criminal prosecution. Nor should it provide motivation for the prosecution to transfer the matter from the juvenile court to the adult court.

The United States and the Connecticut Constitutions require that any confession be knowing and voluntary. Because of the young age of the accused, there is always a question of whether a truly knowing and voluntary waiver can be taken from a juvenile without the assistance of a concerned adult. In a recent case outlawing the use of the death penalty on juveniles, the United States Supreme Court recognized that children have been scientifically proven to be less able to understand the consequences of their actions than adults. The fact that a child's case has been transferred to the adult court should not affect this state's obligation to ensure that all interrogations meet Constitutional standards. Connecticut should adopt the United State Supreme Court's conclusion that people under 18 need special protection and treatment. This proposal would simply ensure that the youngest defendants receive equal protection of their right not to incriminate themselves. Requiring that a parent be present during interrogation for admissibility purposes imposes no additional burden on the police, since the decision to transfer a case is made once the case is docketed in the juvenile court.

Section Four provides for automatic erasure and destruction of juvenile records for children convicted on statutorily defined non serious juvenile offenses. This proposal would help eliminate the unintended consequences of a juvenile conviction by ensuring that records are erased and thus not accessible to anyone.

Sections Five and Six make clear that the right to a writ of habeas corpus applies to juveniles and also specifies that cases where a juvenile files the writ of habeas corpus can be heard in the juvenile matters courts. This issue has arisen several times where a judge ordered a child charged only with a Family With Services Needs case held in juvenile detention. Defense counsel filed a habeas corpus writ on the child's behalf but

the clerks were unfamiliar with the process and sent the case to the habeas judge in Rockville. This proposal would eliminate the unnecessary delay and confusion that resulted in those cases and clarify the process.

Section Seven would allow the Commissioner of Children and Families to allow a child in her custody who has graduated high school to be placed on vocational parole. Since the implementation of *Raise the Age*, children have been graduating while serving their commitment at the Connecticut Juvenile Training School. This proposal would open vocational parole as an option for young adults who may not be headed for college.

Section Eight would return the authority to set the length and location of a child's initial delinquency commitment to the juvenile matters judge. A juvenile delinquency case is, at its heart, a criminal prosecution. It is most appropriate that the judge determine how long a child should be in custody. The Department of Children and Families has the right to ask for an extension of any delinquency commitment, so this committee can be sure that children will receive all the services necessary for maximum rehabilitation.

This section would also place some standards on a court's determination that an extension is in a child's best interest by requiring a finding that the child is in need of services and that no less restrictive alternative to commitment exists. This is the standard required for the original commitment and should be consistently applied every time a child's liberty is infringed upon. It also ensures that the courts are looking towards the most cost efficient options for treating children.

Section Nine will help ensure that the taxpayer funded legal services provided by this agency's staff lawyers and assigned counsel are reaching the indigent clients they are intended for and that the Office of Chief Public Defender is able to stay within its budget allocation for child welfare and family matters. This proposal would require that the juvenile and family court clerks and judges abide by the Division of Public Defender Services indigence guidelines when determining if a family is to receive a state paid Guardian ad litem or attorney for a child in a custody case, attorney for a parent in a child welfare case or attorney for a child in a delinquency case. Current law allows such an appointment based only upon the court's determination of "ability to pay". This has resulted in state rate appointments in cases where parents are represented by highly paid

private counsel or where a judge simply does not wish to make a family pay for counsel. These services are supposed to be reserved for persons who are truly poor. The Division of Public Defender Services Guidelines are based on the federal poverty guidelines and are an accepted measure of true indigence.

Section Ten would also allow the Division of Public Defender Services to seek payment from the Judicial Branch when court ordered counsel is paid from our agency and the party for whom counsel was appointed was later found not to be indigent according to the Division's guidelines. We believe that passage of this proposal will be an important cost saving measure and will help our agency provide the best possible services for our clients.

Section Eleven makes clear that a guardian ad litem who is appointed by the court and paid for from the Division's budget are indemnified from claims in the same way as Division employees and Assigned Counsel are indemnified under current statutes. This proposal fixes what may be viewed as an oversight in the legislation that implemented the consolidation of child protection and family operations into the Division of Public Defender Services.